

# **Notification and Public Participation Processes for National Register/Virginia Landmarks Register Nominations in Virginia**

## **DGR Guidance Document 4598**

**The Department of Historic Resources (DHR) administers two programs designed to recognize our historic resources and to encourage their continued preservation: The National Register of Historic Places (National Register) and The Virginia Landmarks Register (VLR).**

A nomination must be submitted for a property to be considered for listing in the Registers. DHR is Virginia's State Historic Preservation Office (SHPO). Our agency administers the VLR on behalf of the Commonwealth of Virginia and, as the SHPO, administers Virginia's participation in the National Register. DHR is your primary point of contact for all matters related to the VLR and the National Register.

The National Register, established in 1966 and managed by the National Park Service, is the official list of buildings, structures, sites, objects, and districts that embody the historical and cultural foundations of the nation. Virginia's State Review Board is responsible for recommending that nominations be forwarded to the National Park Service for listing in the National Register.

The VLR, established in 1966 and managed by DHR, is the Commonwealth's official list of

properties important to Virginia's history. The same criteria are used to evaluate resources for inclusion in the VLR as are used for the National Register. Virginia's Board of Historic Resources is responsible for listing properties in the VLR.

Public participation and property owner input in the nomination process are crucial aspects of the Register program's success. To that end, DHR adheres to a multi-step notification process to inform property owners, adjacent owners, and local governments of proposed nominations. This notification process is explained in greater detail below. The rights of property owners to support or object to a nomination are provided as well, and at the end of the document there are links to online resources to conduct further research on the legal and regulatory underpinnings of the National Register of Historic Places and the Virginia Landmarks Register.

## **Nominations for Historic Districts**

Before any work commences on a historic district nomination, DHR strongly recommends that local proponents begin comprehensive outreach efforts to all owners within the proposed district. Newspaper articles, one-on-one conversations, door-to-door canvassing, websites, and other outreach methods are appropriate at this phase. It is important to gauge the support of property owners for the proposed district *and* to assess how knowledgeable owners already are of the National Register and VLR. If proponents discover a general lack of understanding about the Register program, then it may be necessary to prepare education materials that explain the historic district project.

At minimum, proponents are expected to hold at least 1-2 public meetings before commencing the survey phase of the nomination's preparation. Property owners should be advised of when the survey will take place, who will be conducting the survey, and what kinds of information that surveyors may ask them about their property. DHR's regional staff will advise as needed throughout this phase.

When district advocates have successfully garnered support for the project, DHR's regional staff will provide technical assistance in preparing the

proposed historic district's nomination to the National Register and VLR. The same nomination form is used for both registers.

As part of the nomination process, DHR will send notification letters to all property owners within the proposed historic district and to owners of properties immediately adjacent to the historic district. DHR is required by law to obtain lists of property owners, including their mailing addresses, from the local government's land records, typically located at the tax assessor's office or courthouse. This is to assure that accurate, current information is used to contact all property owners.

Notification letters include a summary of the nominated district, a map showing its boundaries, and an insert that explains in detail the National Register and VLR programs. The letters also invite owners to comment to DHR staff via letter/email/phone and to attend a public hearing about the district. An example of a typical notification letter to a property owner within a proposed historic district is included at the end of this document.

DHR coordinates and hosts the public hearing for the historic district nomination. Owners

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and adjacent owners may attend, but are not required to do so. Attendance is not required of owners who wish to support or object to the nomination. The public hearing's purpose is to present and explain the nomination process and results of historic district designation, to hear public comment, and to answer questions.

DHR mails notification letters about 60 days prior to the joint meeting of the State Review Board

and the Board of Historic Resources at which the district nomination is planned to be presented. This permits property owners to have 30 days' notice of the public hearing within the district, and 60 days' notice of the joint Board meeting. A map that shows the location of the joint Board meeting is included in the letter. Property owners are invited to attend the joint Board meeting, but are not required to do so, and are invited to speak if they attend, but are not required to do so.

### Nominations for Individual Properties

The owner (or owners) of an individual private property must grant permission before the property can be listed in the National Register and/or VLR. Individual property owners typically either prepare the nomination themselves, hire a professional consultant, or work with a local preservation group or knowledgeable volunteers.

Although owners of individual property typically are very involved in preparation of a nomination for their property, DHR will send an official notification to the owner, as well as to owners of property immediately adjacent to the nominated property. DHR is required by law to obtain lists of property owners, including their mailing addresses, from the local government's land records, typically located at the tax assessor's office or courthouse. This is to assure that accurate, current information is used to contact all property owners.

Notification letters include a summary of the nominated individual property, a map showing its boundaries, and an insert that explains in detail the National Register and VLR programs. The letters also

invite owners to comment to DHR staff via letter/email/phone. A public hearing is *not* required before a nomination for an individual property can proceed.

For individually nominated properties, notification letters are mailed no less than 30 days prior to the joint Board meeting at which the nomination is planned to be presented. A map that shows the location of the joint Board meeting is included in the letter. Property owners who attend the Board meeting are invited to speak, but are not required to attend or to speak if they attend. Notification letters invite owners to comment to DHR staff via letter/email/phone and to attend the Board meeting. A map that shows the location of the joint Board meeting is included in the letter. An example of a typical notification letter for an individually nominated property is included at the end of this document.

Property owners are invited to attend the joint Board meeting, but are not required to do so, and are invited to speak if they attend, but are not required to do so.

### Nominations within Certified Local Government (CLG) Jurisdictions

A Certified Local Government is a local government, such as a town, county, or independent city, that has established a local historic preservation program. A CLG works in partnership with DHR and the federal historic preservation program to incorporate preservation planning in its local decision making process. The local government's commitment to historic preservation entitles it to a role in the nomination process for the National Register and VLR, as explained in Section 101 (c) (2) of the National Historic Preservation Act, as amended (16 U.S.C. 470 *et. seq.*) (see <http://www.achp.gov/NHPA.pdf>).

Exception: The CLG notification procedures do not apply when a nomination is processed by or

through a CLG, for example, through use of grant funds administered by DHR or when the CLG provides its recommendation and report to DHR along with submittal of the nomination package to our agency.

For historic district and individual property nominations within CLG jurisdictions, DHR sends notification letters and nomination materials to the locality's CLG staff, chief elected official, and chief administrative official no less than 60 days prior to the joint Board meeting at which the proposed nomination is planned to be presented.

The locality's CLG staff member typically is its liaison to the CLG's Architectural Review Board

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(ARB), which is the body that has been created by the local government to oversee its historic preservation program (some governments use different names, such as Commission for Architectural Review, but the role in the nomination process is the same). ARBs typically are composed of preservation professionals, such as historic architects, architectural historians, archaeologists, historic preservationists, and historians, as well as at-large citizen representatives. The ARB reviews and comments on the nomination at a public meeting that must be advertised according to local public meeting requirements.

In general, the CLG must agree that a nomination should proceed before DHR will have it presented to the State Review Board and Board of Historic Resources. The means by which the CLG may agree or disagree are as follows:

- If **either or both** the ARB and the chief elected local official recommend that the property is eligible for nomination, DHR will present the nomination to the State Review Board in accordance with the procedures in 36 CFR 60, and 36 CFR 61.
- If **both** the ARB and the chief elected local official recommend that the property **not** be nominated, DHR may not nominate the property unless an appeal is filed in accordance with Section 101 (c) (2) of the National Historic Preservation Act and 36 CFR 60.
- If DHR does **NOT** receive the report and recommendation within 60 calendar days, we will continue the nomination process.
- Any report and recommendation made by the CLG will be included with any nomination submitted by DHR to the Keeper of the National Register.
- DHR will not seek listing of a property in the VLR if **both** the ARB and chief elected local official recommend that the property **not** be nominated.

If the CLG and/or ARB have any questions about the nominated property, corrections to the nomination, or other review comments, they are invited to contact DHR staff about their concerns before making a recommendation.

Immediately upon receipt, questions, corrections, and other review comments received from local officials and/or ARBs are forwarded to DHR's Director and to Board members for consideration during the nomination's review. If both the ARB and chief elected local official recommend that the property not be nominated, DHR's Director and Board members are immediately notified of the recommendation.

Representatives of the CLG and/or ARB are invited to attend the joint Board meeting at which the nomination is planned to be presented, but are not required to do so. Any representatives who attend are invited to speak, but are not required to do so. An example of a typical notification letter to a CLG is attached at the end of this document.

## Nominations within Non-CLG Local Government Jurisdictions

Local governments that are not participants in the Certified Local Government (CLG) program also are invited to review and comment on a proposed nomination. In general, however, the non-CLG locality does not have the authority to prevent a nomination from proceeding.

For historic district and individual property nominations within non-CLG local government jurisdictions, DHR sends notification letters and nomination materials to the locality's chief elected official and chief administrative official no less than 30 days prior to the joint Board meeting at which the

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proposed nomination is planned to be presented.

If the local government officials have any questions about the nominated property, corrections to the nomination, or other review comments, they are invited to contact DHR staff via letter/email/ phone about their concerns. Immediately upon receipt, questions, corrections, and other review comments received from local officials are forwarded to DHR's Director and to Board members for consideration

during the nomination's review.

The notification letter also invites local government officials to attend the joint Board meeting at which the nomination is planned to be presented, but they are not required to do so. Any representatives who attend are invited to speak, but are not required to do so. An example of a typical notification letter to a non-CLG local government is attached at the end of this document.

## Rights of Property Owners to Support, Comment, or Object to a Nomination

### **Supporting and/or Commenting on a Nomination**

A private property owner who supports a nomination for listing in either or both the VLR and the NRHP is invited to send a letter of support but is not required to do so in order for the nomination to proceed. Private property owners also are welcome to comment on a nomination even if they do not seek to go on record with either a vote of support for or an

objection to a nomination. Copies of letters of support and/or comment are provided to the State Review Board (SRB) and the Board of Historic Resources (BHR) for review, along with the nomination to which they refer, and are included with the nomination if the SRB has recommended it to proceed to the NRHP.

### **Objecting to a Nomination**

A private property owner has the right to object to listing in either the VLR or the NRHP, or object to listing in both registers. For a private property that is being individually nominated, each owner or partial owner of the private property may object to listing regardless of the portion of the property that party owns. For a historic district that is being nominated, each owner of private property in the proposed historic district is counted as one individual regardless of how many properties that party owns, and regardless of whether the properties contribute to the significance of the district.

The private property owner's objection to listing must be provided to DHR in writing. Any owner or partial owner of private property who chooses to object to listing shall submit to DHR a written statement of objection that has been attested and notarized by a notary public and that references the subject property by address and/or parcel number and certifying that the party is the sole or partial owner of the private property, as appropriate. Only upon such submission shall such objecting owner be counted by DHR in determining whether a majority of private property owners has objected to a nomination. An objection to both the VLR and NRHP designations can be submitted in the same letter. However, in order for an objection to listing in the VLR to be counted, it must be submitted to DHR a minimum of 7 business days prior to the scheduled Board meeting listed in the notification

letter. An objection to NRHP listing will stand even if the letter arrives too late for consideration of the VLR listing.

If a majority of private property owners object according to the process described herein, the nomination will not proceed. However, as the SHPO, DHR shall submit the nomination to the National Park Service's Keeper for a determination of eligibility of the property for listing in the NRHP. If the property is then determined eligible for listing, although not formally listed, Federal agencies will be required to allow for the Advisory Council on Historic Preservation to have an opportunity to comment before the agency may fund, license, or assist a project which will affect the property.

Letters of objection must be addressed to the State Historic Preservation Officer at the Department of Historic Resources, 2801 Kensington Avenue, Richmond, Virginia 23221.

Letters of objection received a minimum of 7 business days prior to the Board meeting will be copied to the members of the SRB and BHR for review, along with the nomination to which they refer. If, at the Board meeting, the nomination is approved to proceed to the NRHP, all letters of objection will be forwarded to the National Park Service to consider with their review of the nomination, along with any letters of support or comment that DHR has received. Letters of objection to listing in the National Register of Historic Places may be submitted to DHR even

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after the Board meeting at which the nomination is approved. DHR will forward any letters of objection to the National Park Service. The National Park Service continues to accept letters of objection up to

the date of listing in the NRHP. The National Park Service typically concludes review and approval of a nomination within approximately 55 days of receipt of the nomination from DHR.

## State and Federal Legal and Regulatory Requirements

The Board of Historic Resources is responsible for listing properties in the Virginia Landmarks Register. To review the legal and regulatory requirements, see

Virginia Administrative Code Chapter 30, Evaluation Criteria and Procedures for Designations by the Board of Historic Resources.

- A searchable database of the Code of Virginia is online at <http://leg1.state.va.us/000/src.htm>
- A searchable database of the Administrative Code of Virginia is online at <http://leg1.state.va.us/cgi-bin/legp504.exe?000+men+SRR>

The State Review Board is responsible for recommending that National Register nominations be forwarded to the National Park Service for listing in the National Register of Historic Places. To review the legal and regulatory requirements, see the National Historic Preservation Act of 1966 (as amended) and the

National Register Federal Program Regulations at the Code of Federal Regulations, Title 36 – Parks, Forests, and Public Property, Chapter 1 – National Park Service, Department of the Interior, Part 60 – National Register of Historic Places.

- A PDF of the National Historic Preservation Act is available for download at <http://www.achp.gov/nhpa.html>
- The full text and searchable version of federal regulations for the National Register is online at <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&rgn=div5&view=text&node=36:1.0.1.1.26&idno=36> and at <http://www.cr.nps.gov/nr/regulations.htm>.

Please be aware that National Register and VLR historic districts *are not the same* as locally designated historic districts. Locally designated historic districts are created at the local level of government. DHR is not involved with the local historic district designation process. National Register and VLR historic districts are honorary designations, whereas local historic districts often include local regulatory restrictions that

may include planning, zoning, building inspection, permitting, and design review processes. Questions about local historic districts should be directed to your local government. For more information about the differences between historic districts, please refer to DHR's documents entitled, **Comparison Chart of Four Types of Historic Districts in Virginia** and **Historic Districts in Virginia**.<sup>1</sup>

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<sup>1</sup> Virginia has four types of historic districts. Nominations for **National Historic Landmark** districts are submitted directly to the National Park Service. Nominations for **National Register** historic districts are jointly reviewed by DHR and the National Park Service. Nominations for **VLR**

historic districts are reviewed by DHR; however, the same nomination form is used for VLR listings as for National Register. **Local** historic districts are designated only by the local government that has jurisdiction over it.

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**Additional Guidance from the National Park Service**

**Identifying, Notifying and Counting Property Owners When Nominating Properties to the National Register of Historic Places**

National Register of Historic Places regulations [36 CFR Part 60] require that as part of the nomination process, the States must identify the owners of the nominated property, notify the owner(s) in writing of the State's intent to nominate the property, and provide the owner(s) an opportunity to concur in or object to the nomination. If the private property owner or a majority of the private property owners (in instances of multiple ownership of a single property or of districts) formally objects (by notarized letter) to the listing, the property cannot be listed in the National Register [36 CFR 60.6(g)].

National Register regulations define "owner or owners" as "those individuals, partnerships, corporations, or public agencies holding fee simple title to property. Owner or owners does not include individuals, partnerships, corporations, or public

agencies holding easements or less than fee interests (including leaseholds) of any nature," [see 36 CFR 60.3(k)].

To identify property owners, the nominating authority (i.e., DHR) is required to consult the list of owners "from either official land recordation or tax records" [36 CFR 60.69c)]. The state historic preservation office (DHR) must determine how many owners there are, and of that number, how many are private (as opposed to public) owners. Public owners (local, state, or national government entities) can voice an objection, but it does not count in determining if a majority of owners object and thus prevent listing; only private property owner objection can prevent listing.

The following guidance is found in National Register regulations or contained in previously issued National Register policy letters.

**Who Gets to Vote?**

Each person listed in the land recordation or tax records as a private property owner gets one vote, regardless of how many properties or what part of one property that party owns, and regardless of whether the

property contributes to the significance of the district [36 CFR 60.6(g)]. Thus *what is important is not how many properties are within the nominated boundary, but how many property owners.*

**How to Count Private Property Owners**

**A husband and wife** are both listed as owners – each gets a vote and their vote is counted separately. If **only one spouse is listed** in the records as owner, that person gets one vote.

**Several people own one property** and each is recorded as an owner – each gets one vote.

**A person owns several properties within the nominated boundary** – that person gets one vote, regardless of how many properties he or she owns.

**A partnership** is listed as an owner – the partnership is considered one owner and it gets one vote (regardless of how many partners there are).

**A corporation** is listed as an owner – the corporation gets one vote.

**A trust** is listed as an owner – the trust is considered one owner and it gets one vote.

**A condominium** is included within the nominated boundary. The owners of individual units in a condominium hold fee simple title to their property, and therefore are considered owners under the notification provisions of National Register regulations. Each owner of a condominium unit listed in the official land recordation or tax records gets one vote. In addition, the condominium association may be considered one owner for notification purposes if the common areas of the condominium property are owned in fee simple title by that entity.

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**A co-operative (co-op)** is included within the nominated boundary. Those individuals participating in a co-operative are part of a corporation and do not hold fee simple title; instead, the co-operative gets one vote.

**A district which includes both public and private property owners.** As an example, a district includes 100 owners (four public property owners and 96 private property owners). For purposes of owner concurrence or objection, only the 96 private property owners' votes must be tabulated. If 49 of the private property owners (51% of 96) object, the property cannot be listed.

### What Constitutes a Majority?

If a majority of private property owners formally objects, the property cannot be listed. If there are two private property owners and only one objects, the property can be listed; both must object to

constitute a majority to block listing. If there are three owners, two of the three must object. If there are fifty owners, twenty-six must object, etc.

### Additional Frequently Asked Questions

**Question 1.** Can anyone who becomes an owner prior to the final action on the nomination cast a vote concurring in or objecting to the nomination?

**Answer: Yes.** While the regulations require the State to send written notification to the owners of record at least 30 but not more than 75 days before the State Review Board meeting, the regulations also provide that:

“If an owner whose name did not appear on the list certifies in a written notarized statement that the party is the sole or partial owner of a nominated private property such owner shall be counted by the SHPO in determining whether a majority of owners has objected” [36 CFR 60.6(g)].

Notarized letters of objection from private property owners will be considered by the Keeper of the National Register if received by the Keeper prior to the National Register listing date of the property. The National Park Service typically requires 45 days to review a National Register nomination from the date it is received until it is approved and added to the National Register.

**Question 2.** What is the “record date” for determining ownership and, therefore, owners’ eligibility to express consent or objection to the nomination?

**Answer:** National Register regulations require that the State obtain the property owner list “within 90 days prior to the notification of intent to nominate” [36 CFR 60.6(c)]. As outlined in our response to Question 1, however, any owner not appearing on such lists may still concur in or object to listing by providing the required documentation establishing ownership.

**Question 3.** Can a notarized statement of consent or objection become “stale” and cease to be effective because it was made too far in advance of the State’s final action?

**Answer: No.** Statements of consent or objection do not automatically become “stale” or invalid unless new documentation becomes available that contradicts the previous information (i.e., an owner provides a new letter of consent or notarized objection, or a different owner is identified and verified). In cases where there has been a significant passage of time from the original notification and the submittal of the nomination of the property to the National Register, the SHPO is required to renotify property owners, including the reverification of the list of owners required under 36 CFR 60.6c. In addition, if subsequent to nomination (i.e., after it is formally nominated and returned to the

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State by the National Register) a State makes a major revision to a nomination or renominates a property rejected by the Keeper, the SHPO shall notify the affected property owners and chief elected local official of the revisions or renomination in the same manner as the original notification for the nomination [36 CFR 60.6(w)].

**Question 4.** What if the owner's letter of objection is not notarized, as required by 36 CFR 60.6(g)?

**Answer:** If the State receives an owner objection letter that is not notarized, the objection does not count. The State may want to alert the owner that the letter is deficient and the objection will not be counted.

For any questions concerning the National Park Service's guidance for counting property owners, please contact Patrick Andrus at (202) 354-2218 or Paul Lusignan at (202) 354-2229.

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